

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROBIN BLAKE COMBS, SR.,

Plaintiff,

V.

STATE OF WASHINGTON,
WASHINGTON DEPARTMENT OF
CORRECTIONS, ELDON VAIL, BERNIE
WARNER, STEVE HAMMOND,
MICHAEL KENNEY, CARE REVIEW
COMMITTEE, RONALD FREDRICK,
TAMARA ROWDEN, ISRAEL (ROY)
GONZALEZ, JAY JACKSON, DIANA
BENFIELD, GREG GARRINGER, JOENNE
McGERR, GARY FRIEDMAN, JEFFREY A
UTTECHT, DAVID P. BAILEY, MELISSA
ANDREWJESKI, RUBY JOHNSON, MARK
BRAWDY, J. BROWN, BRYAN KING,
KEVIN K. SMITH MD, ELIZABETH
SUITER MD, DALE FETROE MD, JEAN
RYAN, ERIC ASKREN, JANE and JOHN
DOES.

Defendants.

No. C12-5280 RBL/KLS

ORDER GRANTING EXTENSION OF
DEADLINES AND DIRECTING
SUBMISSION OF ADDRESSES UNDER
SEAL

Before the Court is Plaintiff's motion for extension of the discovery deadline. ECF No.

19. Defendants do not oppose the extension but ask that the Court limit Plaintiff's discovery to "some reasonable but limited number of requests directed only to the newly served Defendants."

ECF No. 21. Defendants also ask that all other pre-trial deadlines be extended. *Id.* The Court finds that the extension requested is reasonable and will be granted without limiting the scope of

ORDER - 1

1 any additional discovery. The dispositive motions and joint status report deadlines shall also be
2 extended and Defendants directed to provide addresses under seal.

3 **BACKGROUND**

4 Defendants State of Washington, Washington Department of Corrections, Jeffrey Uttecht,
5 Dave Bailey, Melissa Andrewjeski, Bryan King, Joshua Brown, Eric Askren, Elizabeth Suiter,
6 and Dale Fetroe, were personally served copies of the Summons and Complaint. These
7 Defendants removed the action from the Thurston County Superior Court to this Court, paid the
8 filing fee (Receipt #0981-2764726), and filed their Answer to Plaintiff's Complaint. ECF No. 1;
9 ECF No. 5. The remaining Defendants had not been served at the time of removal.

10 Plaintiff was granted leave to proceed *in forma pauperis* in this Court. ECF No. 17. By
11 Order dated October 17, 2012, the Court directed service of process on the remaining defendants.
12 ECF No. 24. To date, ten waivers of service have been signed and returned to the Court. ECF
13 Nos. 31-40. Four waivers have been returned to the Court as "undeliverable", "No Longer in
14 State Service". ECF Nos. 27-30. Six more have been returned as "undeliverable", "Not at this
15 Address". ECF Nos. 41-46.

16 The Court's Scheduling Order dated April 25, 2012, set a discovery deadline of October
17 26, 2012; dispositive motions deadline of December 28, 2012; and, a joint status report deadline
18 of March 29, 2013. ECF No. 7.

19 **DISCUSSION**

20 A scheduling order may only be modified for good cause and with the Court's consent.
21 Fed. R. Civ. P. 16(b)(4). The stringent requirement of Fed. R. Civ. P. 16(b)'s "good cause"
22 standard considers the diligence of the party seeking the amendment. *Johnson v. Mammoth
23 Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). "Good cause" for modification of pretrial

1 order's scheduling deadline means that scheduling deadlines cannot be met despite the diligent
2 efforts of the party seeking the extension; carelessness is not compatible with finding of
3 diligence and offers no reason for grant of relief. *Id.;Zivkovic v. Southern California Edison Co.*,
4 302 F.3d 1080, 1087 (9th Cir. 2002) (If the party seeking the modification was not diligent, the
5 inquiry should end and the motion to modify should not be granted).

6 Based on the foregoing, the Court finds Plaintiff's request for an extension of the
7 discovery deadline to be reasonable. Less than one-half of the named Defendants have been
8 served in this matter. Until service is perfected and the additional Defendants have been served
9 with discovery, it is not possible to determine what further discovery may be necessary. Thus,
10 Defendants' request to limit discovery shall be denied.

12 Plaintiff previously sought leave to require Defendants to provide their work and/or home
13 addresses under seal. ECF No. 8. That request was denied until Plaintiff first attempted service
14 of the Defendants at their last known work locations. ECF No. 12. Defendants opposed
15 Plaintiff's motion, noting that “[t]ypically, the work locations of Defendant Department
16 employees are sufficient” for service and even without Court ordered service, Plaintiff “could
17 use work addresses to seek waiver pursuant to Fed. R. Civ. P. 4 (d)(1).” ECF No. 10.

19 To date ten Orders for Service have been returned because the named defendant is no
20 longer in state service or not at the work address provided. If Defendants are in possession of the
21 last known business or last known home addresses of the non-served defendants, a sensible
22 solution is that Defendants submit such information to the court **under seal** so that the Clerk may
23 attempt to effect service. This solution alleviates two concerns concerning involving prisoner
24 litigation: (1) the security risks inherent in providing prisoners with addresses of people formerly
25 employed by the state; and (2) the reality of prisoners getting the “runaround” when they are
26 employed by the state; and (2) the reality of prisoners getting the “runaround” when they are

1 attempting to access information through the government. *Sellers v. United States*, 902 F.2d
2 598, 602-603 (7th Cir. 1990).

3 It is, therefore, **ORDERED**:

4 (1) Plaintiff's request to extend the discovery deadline (ECF No. 19) is **GRANTED**.

5 (2) The pre-trial deadlines in this case shall be extended as follows: (a) discovery
6 shall be completed by **February 22, 2013**; (b) dispositive motions shall be filed by **April 26,**
7 **2013**; and (c) the parties' joint status report shall be filed by **July 26, 2013**.

8 (3) If Defendants are in possession of the last known business or last known home
9 addresses of Ruby Johnson, Kevin K. Smith, Mark Brawdy, Jean Ryan, Dan E. Delop, Rodolfo
10 Trevino, Cathy Baum, Paul Larson, Kim Dotson, and Gary Friedman, they shall submit such
11 addresses to the Court **under seal on or before November 13, 2012**.

12 (4) The Clerk is directed to send copies of this Order to Plaintiff and counsel for
13 Defendants.

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17 **DATED** this 2nd day of November, 2012.

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Karen L. Strombom
United States Magistrate Judge